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In the Supreme Court of the United States

OCTOBER TERM, 1940.

Nos. 107 and 108.

In Re: DISBARMENT OF JOSEPH RUBINSTEIN AND CHARLES RUBINSTEIN, ATTORNEYS AT LAW.

JOSEPH RUBINSTEIN AND CHARLES RUBINSTEIN,
Petitioners.

OPPOSING BRIEF IN BEHALF OF RESPONDENTS.

CHARLES AUERBACH,
Counsel for Respondent.

CHARLES AUERBACH,
JAMES B. DOLPHIN,
GEORGE M. BROWN,
Trial Committee.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO

Wherever "Appendix A" appears herein, reference is made to Appendix A—Petition for Writ of Certiorari.

INDEX.

PROPOSITIONS OF LAW 1

Proposition of Law No. 1 1

Proposition of Law No. 2 1

Proposition of Law No. 3 2

Proposition of Law No. 4 2

Proposition of Law No. 5 3

Proposition of Law No. 6 3

Proposition of Law No. 7 3

ARGUMENT:

The Preliminary Investigation—An Orderly Court Procedure Approved in Ohio and Followed in New York and Elsewhere 4

THE TRIAL:

A Full and Fair Trial was Given the Petitioners in Complete Accord with Ohio Laws 9

MORAL TURPITUDE:

The Acts of Misconduct of the Petitioners, Irrespective of False Swearing, Constitute Moral Turpitude ... 12

Conclusion 16

AUTHORITIES CITED.

Cases.

Akron Ambulance Chasing Inquiry, 26 O. L. R. 515...2, 4, 7

Bass v. Milledgville et al., 295 U. S. 721 1

Bell Telephone Co. of Pa. v. Van Dyke, 296 U. S. 533 .. 1

Re: Bradwell, 183 U. S. 130 3

Chreste v. Commonwealth, 171 Ky. 77; 186 S. W. 919, 926 3

The Cleveland Bar Assn. Investigation, 15 O. L. Abstract 106 2

Clunes v. Duluth W. & R. R. R. Co., 298 Fed. 964 4

Ex P. Denson, 178 S. 434 1

Re: Fenn, 128 S. W. (2d) Mo. App. 657 2

Fish v. Cal., 4 Pac. 2d, 937 4

Frank v. Mangum, 237 U. S. 309 2

Garfield v. U. S., 32 Ap. D. C. 109 7

Hurtado v. Cal., 110 U. S. 516 2

Judd v. Tr. & Sav. Bank, 133 O. S. 81 ..... 3, 9

Ex rel. Karlin v. Culkin, 248 N. Y. 465; 60 A. L. R. 851 ..... 2, 3, 7

Re: Keenan (Mass.), 192 N. E. 65; 96 A. L. R. 679 .... 2, 7

Klenson v. Board of Governance Pa. Bar (Sup. Ct. Pa.), 168 Atl. 474 3

The Land Title Abstract & Trust Co. v. Dworkin, 129 O. S. 23 ..... 3, 9

Re: Lockwood, 154 U. S. 116 3

Martin v. Beery, 39 O. L. R. 273 2

Re: Mayberry (Mass.), 3 N. E. (2d) 248 2

Re: Meck, 51 O. App. 237 ..... 3, 16

Meguire v. Cowine, 101 U. S. 108 3

Re: Mo. v. North, 271 U. S. 40; 46 Supreme Court 384.. ..... 1, 2, 11, 16

Re: Needham (Ill.), 4 N. E. (2d) 19 2

Re: Newcomb, 15 O. L. A. 106 7

Re: Petition, Rule 28, 15 O. L. A. 106..... 4

Philbrook v. Neuman, 85 Fed. 139, 142 3

Rule 28 of Cleveland Bar Association, 29 O. N. P. (N. S. 291) 3

Re: Rouss, 221 N. Y. 84, 116 N. E. 783 .....2, 3, 7, 8

Re: Schwartz, 18 O. App. 373 ..... 2, 9

Re: Shay, 196 N. Y. 530, 89 N. E. 1112 3

Re: Solovei, 293 N. Y. S. 640; affirmed in 276 N. Y. 647 8

State v. Kiefer, 197 Wis. 524, 222 N. W. 795 3

Re: Thatcher, 80 O. S. 492 .....2, 3, 16

Re: Thatcher, 190 Fed. 969. Appeal dismissed 246 U. S. 644 ..... 1, 2, 3

Utley v. St. Petersburg, 292 U. S. 106, 111-112 1

Van Valkenberg v. Ohio, 11 O. 405, 406 8

Re: Vaughan (Cal.), 209 Pac. 353, 24 A. L. R. 863 2

Ex Parte Wall, 107 U. S. 265..... 2, 7

Weinard v. Chi., Milwaukee & St. Paul Railway Co., 298 Fed. 977 4

Texts.

Annotation, 60 *A. L. R.* 860, 863 7

7 *C. J. S.,* 728 Sec. 18 1

Statutes.

G. C. O., Section 1707 9

G. C. O., Section 1708 9

G. C. O., Section 11346 10

McKinney's Consolidated Laws of New York, Penal, Article 24, Section 270 D 8

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JOSEPH RUBINSTEIN AND CHARLES RUBINSTEIN, *Petitioners.*

OPPOSING BRIEF IN BEHALF OF RESPONDENTS.

PROPOSITIONS OF LAW.

PROPOSITION OF LAW NO. 1.

It was not necessary for the Supreme Court of Ohio to decide the Federal question sought to be raised on the record in this case. No Federal question was involved. Petitioners cannot acquire Federal jurisdiction by allegations.

Mo. v. North, 46 Sup. Ct. 384;
Bell Telephone Co. of Pa. v. Van Dyke, 296 U. S. 533;
Bass v. Milledgville, et al., 290 U. S. 721;
7 *C. J. S.,* 728 Sec. 18;
Ex P. Denson, 178 S. 434;
Re: Thatcher, 190 Fed. 969. Appeal dismissed 246 U. S. 644;
Utley v. St. Petersburg, 292 U. S. 106, 111-112.

PROPOSITION OF LAW NO. 2.

The Federal constitutional provision against self-incrimination is not applicable to disbarment proceedings. It is universally held that proceedings to disbar an attorney are civil, not criminal in nature, and are governed by rules applicable to civil actions, the purpose being to cleanse the Bar, not to punish the offending attorney.

In re: Thatcher, 190 Fed. Ohio 969;
Thatcher, 80 O. S. 492, 670;
Schwartz, 18 O. App. 373;
Wall, 107 U. S. 265;
Rouss, 221 N. Y. 84, 116 N. E. 783;
Vaughan (Cal.), 209 Pac. 353, 24 A. L. R. 863;
Needham (Ill.), 4 N. E. (2d) 19;
Mayberry (Mass.), 3 N. E. (2d) 248;
Fenn, 128 S. W. (2d) Mo. App. 657;
Ex rel. Karlin v. Culkin, 248 N. Y. 465; 60 A. L. R. 851.

PROPOSITION OF LAW NO. 3.

There is no substantial Federal question involved for there has been no deprivation of due process. The proceedings were conducted according to law in Ohio. G. C. 1708. Petitioners were given notice and a reasonable opportunity to answer the charges. They employed counsel; they offered evidence; they were heard in their own defense. All requirements of due process were therefore fulfilled.

Mo. v. North, 46 Sup. Ct. 384;
Hurtado v. Cal., 110 U. S. 516;
Frank v. Mangum, 237 U. S. 309;
Re: Keenan (Mass.), 192 N. E. 65; 96 A. L. R. 679.

PROPOSITION OF LAW NO. 4.

The preliminary investigation into activities of attorneys adopted in this case has been approved in Ohio and elsewhere. Authority for it is founded upon G. C. O. 1707.

In re: The Cleveland Bar Assn. Investigation, 15 O. L. Abstract 106;
Akron Ambulance Chasing Inquiry, 26 O. L. R. 515;
Martin v. Beery, 39 O. L. R. 273;
Rouss, supra;
Ex rel., Karlin v. Culkin, supra.

PROPOSITION OF LAW NO. 5.

The practice of law in Ohio, and in most States in the Union, is controlled and regulated by the Judicial Branch of the Government and constitutes a privilege granted by the State to the individual, burdened with conditions. It is not a contract between the State and the individual, as contended by the petitioners.

The Land Title Abstract & Trust Co. v. Dworkin, 129 O. S. 23;
Judd v. Tr. & Sav. Bank, 133 O. S. 81;
Re: Thatcher, 80 O. S. 492, 64;
Re: Thatcher, 190 Federal 969;
Re: Meck, 51 O. App. 237, 239;
Re: Rouss, supra;
People ex rel., Karlin v. Culkin, supra.

PROPOSITION OF LAW NO. 6.

Practicing law in State courts is not a privilege which arises by virtue of Federal citizenship.

Re: Bradwell, 183 U. S. 130;
Re: Lockwood, 154 U. S. 116;
Philbrook v. Newman, 85 Fed. 139, 142.

PROPOSITION OF LAW NO. 7.

"Ambulance Chasing" involves moral turpitude and is ground for disbarment.

Re: Meck, 51 O. App. 237;
Klenson v. Board of Governance Pa. Bar (Sup. Ct. Pa.), 168 Atl. 474;
Chreste v. Commonwealth, 171 Ky. 77; 186 S. W. 919, 926;
Re: Shay, 196 N. Y. 530, 89 N. E. 1112;
State v. Kiefer, 197 Wis. 524, 222 N. W. 795;
Meguire v. Cowine, 101 U. S. 108;
Rule 28 of Cleveland Bar Association, 29 O. N. P. (N. S. 291);

Re Petition, Rule 28, 15 O. L. A. 106;
Akron Ambulance Chasing Inquiry, 26 O. L. R. 515;
Weinard v. Chi., Milwaukee & St. Paul Railway Co., 298 Fed. 977;
Clunes v. Duluth W. & R. R. R. Co., 298 Fed. 964;
Fish v. Cal., 4 Pac. 2d, 937.

ARGUMENT.

THE PRELIMINARY INVESTIGATION—AN ORDERLY COURT PROCEDURE APPROVED IN OHIO AND FOLLOWED IN NEW YORK AND ELSEWHERE.

The Petitioners pose the question whether calling an attorney-at-law to give an account of his activities as a lawyer before a judicial tribunal in the State which admitted him to practice violates the Federal Constitution. Contending that for a State Court to do so violates due process, the Petitioners attempt to discredit the procedure in the instant case by stigmatizing it as a "star chamber" session, and adding thereto an unfortunate and regrettable misstatement of facts.

Postponing for the moment a discussion of the law relevant to this subject, it is imperative to advise this Court promptly and to indicate factually what transpired in order to allay any suspicion that may have been engendered by the allegations in the Petition for Certiorari.

1. On September 26, 1938, Homer G. Powell, the Chief Justice of the Common Pleas Court of Cuyahoga County, Ohio, upon application by Members of The Cleveland Bar Association ordered an investigation into abuses then prevalent among which was that of "Ambulance Chasing." (Order attached to original charges. Transcript of Docket and Journal Entries in Common Pleas Court.)
2. In October, 1938, the Honorable Judge Wolf of Common Pleas Court, Fulton County, Ohio, undertook the investigation by designation of the Chief Justice of the Supreme Court of Ohio.

3. On October 14, 1938, after numerous witnesses were inquired of, Joseph Rubinstein was called. Relator's Exhibit D, which the Petitioners do not include in their proposed narrative Bill of Exceptions, contains the statements made during said preliminary hearing by Joseph and Charles Rubinstein. It reads as follows:

"Friday, October 13, 1938, 9:15 o'clock a. m.

"Whereupon, Joseph Rubinstein was duly sworn by the Court, and was examined, and testified as follows:

"Examination by Mr. Wilson:

Q. Your name is Joseph Rubinstein?
A. Yes.
Q. Where do you live, Mr. Rubinstein?
A. 3160 Oak Road, Cleveland Heights, Ohio.
Q. Are you an attorney-at-law?
A. I am.
Q. Do you have offices?
A. Yes. At 407-408 Public Square Bldg., Cleveland.
Q. Do you maintain another office, too?
A. Yes. At 5525 Woodland, in the hardware store in back," etc.

From page 1761 to page 1852, as they are marked, in "Relator's Exhibit D," not one word of objection appears to the questions asked from either Joseph Rubinstein or Charles Rubinstein. Not one word was spoken by Joseph Rubinstein or Charles Rubinstein, indicating that either wanted counsel. Not a syllable appears from which it might even be inferred that they protested against being questioned. In fact, at page 1847 of said "Exhibit D," the following appears:

"Mr. Bolton: Your Honor, I think Mr. Rubinstein ought to be instructed not to destroy his records.
The Witness: (J. R.) Oh, I have got them all.
Mr. Bolton: We want to use them later on.
The Court: Oh, yes. I assume he won't do that.
The Witness: I will destroy them today. Why, I have got all my records for years back. You can come

up at any time that you want and check with them. You don't even have to call me.

Mr. Wilson: The cancelled checks, too?

The Witness: You can come up at any time.

The Court: You will preserve them?

The Witness: Sure. Who do you want first this afternoon, Terrell or my brother Charles?

The Court: Which do you want first this afternoon?

Mr. Wilson: Terrell.

Whereupon, the witness was excused.

The Witness: I would like to have my subpoena fee. How about my dollar?

Mr. Wilson: Do you want the dollar?

The Witness: Yes.

Mr. Wilson: All right. I will pay it to you."

Pursuant thereto, Charles Rubinstein and Seymour Terrell appeared, were interrogated and not one word of protest was offered by either; no objection was interposed, and no request for counsel was made. (Testimony of Charles Rubinstein—Relator's Exhibit D—pages 1929-1968.) On the 24th day of October 1938 Judge Wolf ordered this Committee to file charges against Charles and Joseph Rubinstein. (Journal entry attached to original charges.)

Thus it may be seen that far from the allegation of a "star chamber" session which the Petitioners would have the Court believe took place over their objections, the proceedings were conducted by a Judge of the Common Pleas Court, in an atmosphere of fairness sufficient to impel Joseph Rubinstein to ask of the Court when his brother and his employee were wanted and they would appear at the time agreed upon.

Disposing, therefore, of the factual matter which Petitioners should have but did not include in their narrative bill, we respectfully call the Court's attention to but a few of numerous cases which hold that the procedure adopted

by our Courts in Ohio is proper and does not violate the lawyer's constitutional rights.[1]

In *People ex rel., Karlin v. Culkin,* Justice Cardozo held:

> "The Court has power to direct a general inquiry into the conduct of its own officers, the members of the Bar, and, in the course of that inquiry to compel one of those officers to testify as to his acts in his professional relations, subject to his claim of privilege if the answer will expose him to punishment for crime and provided the inquiry be a secret one in its preliminary stages."

The secrecy which Justice Cardozo imposed upon such an investigation to prevent harm to innocent lawyers who might become the subject of inquiry is made use of by the Petitioners as a denial of their constitutional rights, by appending thereto the opprobrium "star chamber." Universally, this procedure is approved, Ohio included.[2]

To raise a Federal question, the Petitioners complain that their statements thus given upon the preliminary investigation could not be used against them on trial. Doing so, it is claimed, denied them due process. The contention is based upon the assumption that a disbarment proceeding is a criminal proceeding and, therefore, inquiring of the attorney involves the constitutional inhibition against self-incrimination. We have heretofore cited numerous cases under Proposition No. 2, holding that disbarment is not a criminal but a civil proceeding. It is so considered in Ohio and elsewhere in the United States. There are no common

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[1] 1. *People ex rel., Karlin v. Culkin, supra.*
2. *Ex Parte, Wall,* 107 U. S. 265.
3. *Garfield v. U. S.,* 32 Ap. D. C. 109.
4. Annotation, 60 *A. L. R.* 860, 863.
5. *Re: Kennan, supra.*

[2] *Akron Inquiry,* 26 O. L. R. 515.
Re Newcomb, 15 O. L. A. 106.
Re Rouss, 221 N. Y. 84.

law crimes in Ohio[3] and there is no statutory provision in our State which makes it unlawful for either an attorney to solicit professional employment or for others to solicit for him. The Petitioners, therefore, could have admitted frankly their activities, especially those of soliciting professional employment, which their counsel admitted in argument after two weeks of trial, without subjecting themselves to any criminal charge. Thus, the filing of specification No. 3 against them would have been precluded. The violation of Rule 28 of the Supreme Court of Ohio subjects the offender to reprimand, suspension, or disbarment but not to punishment for crime. No criminal charge of any kind has been instituted against the Petitioners. But the Petitioners continued to deny solicitation of business, even during trial, and it was only at the close of the case, in the face of overwhelming testimony that counsel for the Petitioners during his closing argument, admitted that Joseph Rubinstein solicited professional employment. (Appendix A—Findings of the Trial Judges.)

In New York, although it is unlawful for an attorney to employ one for the purpose of soliciting business,[4] he may nevertheless be called to testify concerning his conduct as a lawyer and such testimony may be introduced upon the trial of charges of unprofessional conduct made against him as a result of such investigation.[5] He is allowed to obtain the benefits of constitutional immunity against self-incrimination, and his refusal to waive such immunity is in and of itself no ground for disbarment or even censure, but his statements, thus made, may be used for purposes of disbarment in the proceeding instituted against him.

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[3] *VanValkenberg v. Ohio,* 11 O. 405, 406.

[4] 39 McKinney's Consolidated Laws of New York, Penal, Article 24, Section 270 D.

[5] *Re: Rouss, supra.*
Re: Solovei, 293 N. Y. S. 640; affirmed in 276 N. Y. 647.

THE TRIAL.

A FULL AND FAIR TRIAL WAS GIVEN THE PETITIONERS IN COMPLETE ACCORD WITH OHIO LAWS.

Trial procedure in disbarment proceedings in Ohio is governed by G. C. O. Section 1708:

> "*Proceedings against attorney.*—Before an attorney is suspended or removed, or publicly or privately reprimanded, written charges must be filed against him, stating distinctly the grounds of complaint, and a copy thereof, certified by the clerk, under the seal of the court, served upon him. After such service, he shall be allowed a reasonable time to collect and present testimony in defense, and he shall be heard by himself or counsel."

Although Courts in Ohio have inherent power exclusively to regulate, define and control the practice of law,[6] nevertheless, the procedure involved in a disbarment proceeding is governed by G. C. O. Section 1708. Adhering strictly to the provisions of that Section and G. C. O. 1707, which imposes a duty upon judges of State courts "to cause proceedings to be instituted against an attorney-at-law when it comes to the knowledge of any judge or when brought to his knowledge by the Bar Association of the County in which such attorney practices, that he may be guilty of any of the causes of suspension, removal or reprimand," Judge Wolf ordered Charles Auerbach, James B. Dolphin and George M. Brown to prepare and file written charges and specifications against Joseph and Charles Rubinstein, and one, Seymour Terrell. (Appendix—Journal Entry of Judge Wolf.)

On the 21st day of November, 1938, the Committee, pursuant to said order, prepared, signed, and filed written charges and specifications against Joseph and Charles

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[6] *Dworkin v. The Land Title & Trust Company, supra.*
Judd v. Tr. & Sav. Bank, supra.
Schwartz, supra.

Rubinstein and Seymour Terrell. (Transcript of Record and Journal Entries.)

On the 23rd day of November, 1938, copies of said charges and specifications were served by the Sheriff of Cuyahoga County, upon the three men named, allowing them until the 24th day of December, 1938, to make answer and to present testimony in their defense on January 10, 1939. (*Ibid.*)

The time allowed in civil causes for answer by defendants is "on or before the third Saturday after the return day of the summons or service by publication." (G. C. O. 11346.) In disbarment proceeding, no definite date for answer is provided. (G. C. O. 1708.) Nevertheless, the Chief Justice of the Common Pleas Court allowed Joseph and Charles Rubinstein the full time allowed by the statute in civil cases, to make answer.

On the 23rd day of December, 1938, Joseph and Charles Rubinstein filed motions to make definite and certain the charges against them. These were orally argued in open Court and overruled. Later, they filed motions seeking a postponement of the trial date. The motions were granted and the trial date set for January 30, 1939.

On the 30th day of January, 1939, the Honorable Guy B. Findley, Judge of the Common Pleas Court of Lorain County, Charles Houston, Judge of the Common Pleas Court of Richland County, and Clarence U. Ahl, Judge of the Common Pleas Court of Crawford County, by designation of the Chief Justice of the Supreme Court of Ohio, proceeded to try the lawyers named. (*Ibid.*)

The Petitioners, Joseph and Charles Rubinstein, were represented by two able lawyers in Cleveland, Ohio, who cross examined witnesses offered by the Committee, examined witnesses for the respondents, argued motions orally, took objection and exception to introduction of testimony, put Joseph and Charles Rubinstein on the witness stand in their own behalf, offered testimony of character

witnesses, and argued the case of each. (Findings of Trial Judges, Appendix A, Petition for Writ of Certiorari.)

On the 10th day of February, 1939, after 11 days of trial, the case was submitted to the three Judges, who, after deliberating through that day and the following day, rendered their decision on the 11th day of February, 1939, finding Joseph and Charles Rubinstein guilty on two charges, Joseph Rubinstein not guilty on one charge, and ordered the disbarment of both. Thereafter, appeal was made to the Court of Appeals, which affirmed the judgment of the Common Pleas Court, which, on appeal to the Supreme Court of Ohio, was again affirmed.

We respectfully submit that the constitutional requirements for due process were thus fully met by the foregoing procedure. As was stated by Mr. Justice Stone in *Mo. v. North,* 46 Sup. Ct. 384:

> "The Due Process Clause does not guarantee to a citizen of a State any particular form or method of State procedure. Its requirements are satisfied if he has reasonable notice, and reasonable opportunity to be heard and to present his claim or defense."

The Supreme Court of the United States in the same case further declared:

> "A statute which places all physicians in a single class and prescribes a uniform standard of professional attainment and conduct, as a condition of the practice of their profession, and a reasonable procedure applicable to them as a class to insure conformity to that standard, does not deny the equal protection of the laws within the meaning of the Fourteenth Amendment."

MORAL TURPITUDE.

THE ACTS OF MISCONDUCT OF THE PETITIONERS, IRRESPECTIVE OF FALSE SWEARING, CONSTITUTE MORAL TURPITUDE.

It is claimed by the Petitioners that charging them with offering false testimony upon the preliminary investigation was gratuitous and oppressive and but for such charge the Petitioners could not have been found guilty of unprofessional conduct involving moral turpitude, and, therefore, could not have been disbarred.

It is imperative, therefore, that this Court be advised briefly of what acts of misconduct, exclusive of false swearing, the Common Pleas Court found the Petitioners guilty.

We submit that the following acts of misconduct of which the Petitioners were found guilty in and of themselves constitute unprofessional conduct involving moral turpitude.

1. Joseph Rubinstein solicited Marksz, Sr. for his claim against a defendant for the death of his boy, during a "wake" while the body of his son was lying in state in his home before burial. (Record Pages 352-355.) (Finding of Court, Appendix A, Petition for Certiorari.)
2. In the same case, when the father refused to consider Joseph Rubinstein as counsel, he importuned the sister of the dead boy to intercede in his behalf upon the promise of a job for her. (Record Pages 354-355.)
3. Charles Rubinstein solicited John Vance before he arrived at his home from the hospital and signed him to a contract, against the side of a building, before he could enter his household, having followed him from the hospital where he importuned his wife to keep him in the hospital a little longer than the short time required for treatment of minor injuries. (Record Pages 233-236.)
4. Milton Rubinstein, a brother of Charles and Joseph, who, Joseph admitted, brought the firm

numerous cases, gave one, Matty, whiskey to raise his blood pressure to make it appear that he had received an aggravated injury. (Record Pages 207-229.)

5. Joseph Rubinstein signed Margaret Stensel to a contract while she was in a hospital in a semi-conscious condition a few days after a serious railroad accident when she did not know what she was signing, and refused to return the contract to her when she became fully aware of what she had done and demanded the same, until forced by The Cleveland Bar Association to do so. (Record Pages 240-244.)
6. Likewise, Frank White was signed to a contract while semi-conscious. (Record Pages 14, 15 and 16.)
7. Rubinsteins' solicitors approached John Henry Spates within three minutes after an accident, urging him to engage a lawyer and signed him to an agreement for such employment, in the hardware store of Milton Rubinstein, the outpost of the activities of this firm, within twenty minutes after the accident occurred. (Record Pages 122, 126 and 127.)
8. In the same case, although Spates was uninjured, and said so, he was advised by one of the Rubinsteins, "The one who owned the hardware store," "If you want any money, you cannot say there is nothing wrong with you. You have to say your back hurts," and was advised to see a Dr. Stevens who examined for the Rubinsteins. (Record Pages 122, 126 and 127.)
9. Rubinstein & Rubinstein obtained employment upon the false representation by solicitors that the lawyers had witnesses; they entered the homes of persons totally strange to them, upon representation that they were social workers or newspaper reporters; that friends had sent them. (John Caduff, Record Page 339; Jane Cordell Hayes, Record Pages 277-278; Helen Trembluk, Record Pages 182-187; Mike Kotys, Record Page 312; Frank

Balas, Record Page 144; Findings of Court, Appendix A, Petition for Writ.)

10. The Petitioners obtained contracts from injured persons upon the representation that all expenses would be paid and then had them execute other agreements in which no mention was made of paying such expenses. (Record Pages 84, 85, 158, 90, 91, 92, 175, 225, 227, 289, 572, 573, 606.)

11. Joseph Rubinstein advised a client to indicate to a defendant's examining physician, that his back hurt, because such claim could not be ascertained or disproved by physicians. (Record Pages 207-229.) (Testimony of John Vargo, Record Pages 254-262.)

12. They engaged the services of runners to solicit cases for them and paid for such services. (Record Pages 1-34.) (Findings of Trial Judges, Appendix A, Petition for Certiorari.)

13. They employed doctors to examine clients and paid stipulated sums regularly for such services. (Findings of Judges, Appendix A.)

14. After Joseph Rubinstein was reprimanded by the Common Pleas Court for soliciting professional employment in 1930, he continued on a vaster scale to build an organization and engage in such practice, irrespective of the reprimand. (Findings of Judges, Appendix A. Record Page 555.)

15. In a period of approximately two years, one young attorney in the office of Rubinstein & Rubinstein had for disposition seven hundred cases, ninety-five per cent of which were personal injury matters. This was the extent of the workings of this organization. (Record Page 604 and Page 1856 Relator's Exhibit S.)

16. A declaration by an attorney such as the following made by Charles Rubinstein indicates a conscious disregard of the high moral standard required of attorneys necessary in the proper administration of justice, and involves moral turpitude. Charles Rubinstein, at Record Page 606,

on cross examination, when questioned regarding the method employed by him to solicit business, stated:

> "Usually I learned that from around the Police Station. If you want to stay on the right side, take one of the relatives along with you. They have got to admit you and the people will recognize the party. No one spits in your face and you are on the right side of the law."

17. The operations of this firm included an outpost in a hardware store of Milton Rubinstein, brother of Charles and Joseph Rubinstein (R. 16) to which came information of accidents and from which Milton and Charles Rubinstein and Charles Astikian, as well as others, "Sandy" and "Rice" ventured forth. Areas were assigned to various persons. Astikian had the hotel area (R. 19-20.) Use was made of printed contingent employment contracts with the name of Joseph Rubinstein printed thereon to be signed by whoever obtained the case. (Findings of Judges, Appendix A, Petition for Writ of Certiorari.)

With such facts in their possession, the Committee did not have to resort to imaginary soliloquies or to alleged chicanery, as charged in the Petitioners' application for Writ of Certiorari, at Page 14, to establish moral turpitude. But with such facts in the Committee's possession, it was clearly apparent that when both Charles and Joseph Rubinstein stated under oath that they did not solicit business and that they employed no one to solicit for them, they were not telling the Court the facts and it became their duty to charge them with such misconduct. In Ohio, the rule by which a lawyer's conduct is measured has been very clearly stated to be as follows:

> "Whenever it is made to appear to the Court that the attorney is no longer worthy of the trust and confidence of the public and of the Courts, it becomes not merely the right but the duty of the Court which made him one of its officers and gave him the privilege of

ministering within its Bar, to withdraw the privilege."[7]

Our Courts have further held that conduct far less reprehensible than was proved against the Petitioners in this case may subject the attorney to suspension or disbarment.[8]

The Supreme Court of Ohio, by refusing review in the case at Bar, has held that the Petitioners' conduct merited disbarment for violating the standards which it laid down for the conduct of its officers.

Since in Ohio such conduct involves moral turpitude, this Court, it has been held, will disregard the alleged claim that the conduct of the Petitioners, exclusive of false swearing, did not involve moral turpitude.[9]

This Court will not review the judgment of the Supreme Court of Ohio concerning a rule of conduct promulgated by that Court for the conduct of its own officers.

CONCLUSION.

Thus, under the law and rules governing this Honorable Court, we conclude that the Petition for Writ of Certiorari in this cause should be denied; that there is no Federal question involved in this cause; that none was necessary to be decided by the Supreme Court of Ohio, and therefore, the Committee's motion to dismiss the petition as of right was granted; that Petitioners were not denied due process, having been given due notice of the charges, according to law in Ohio, and an opportunity to answer and be heard in their own defense; that the Petitioners were guilty of misconduct involving moral turpitude; that the findings of the Trial Court were affirmed by the Court of Appeals and

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[7] *Re: Thatcher,* 80 O. S. 492, 654.

[8] *Re: Meck,* 51 O. App. 237.

[9] *Re: Mo. v. North,* 271 U. S. 40; 46 Supreme Court 384.

by our State Supreme Court; that the Petitioners were accorded every protection guaranteed them by the law of the land.

Respectfully submitted,

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GEORGE M. BROWN,
Trial Committee.

In regard to the motion to dispense with printing portions of the record, we respectfully submit that on the 20th day of May, 1940, when the proposed narrative bill was offered to the Committee, it contained neither the finding of facts nor the contents of Relator's Exhibits "D" and "R." The Committee was not afforded sufficient time to check the narrative bill against the voluminous record in this case but from a study thereof in the short time allowed, it was apparent that the narrative bill reduced the testimony in such measure that a complete account of the entire proceeding from its inception to its conclusion could not be gained therefrom. For these reasons the Committee refused to stipulate.

The Committee is not aware that it was requested or that it refused to stipulate that the docket and journal entries in the Court of Common Pleas and the Court of Appeals in the case of Joseph Rubinstein be printed and that the same be considered as representative of similar proceedings had in the case of Charles Rubinstein. If so, we concede that the transcript of the journal entries in the one case is substantially the same as in the other and may be so used. We do not concede, however, that the proposed narrative bill now contains the testimony necessary to a judi-

cial determination of the questions raised by the petitioners in their petition for a writ of certiorari.

CHARLES AUERBACH,
JAMES B. DOLPHIN,
GEORGE M. BROWN,
Trial Committee.

I hereby certify that a copy of the foregoing Brief and Argument has been served upon Martin J. Monahen, one of counsel for the Petitioners, in Cleveland, Ohio, this 9th day of July, 1940.

CHARLES AUERBACH.